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A NEW APPROACH TO HEALTH CARE ADR: TRAINING LAW STUDENTS TO BE PROBLEM SOLVERS IN THE HEALTH CARE CONTEXT

Linda Morton*

INTRODUCTION

Thoughtful scholars have written contemporary articles on why alternative dispute resolution (ADR) methods have not reached their potential in health care and how we might resolve this dilemma.¹ Some advocate for a better understanding of the health care culture.² Others have discussed particular ADR systems, methods, or process models that are more appropriate and specific to health care settings.³

* Professor of Law, California Western School of Law, San Diego, California. I am grateful to the following individuals: Steven R. Smith, Dean and Professor of Law, California Western School of Law ("CWSL"); Janet Frahm Bowermaster, Associate Dean for Academic Affairs and Professor of Law, CWSL; Susan A. Channick, Professor of Law, CWSL; Bryan A. Liang, Professor of Law and Executive Director, Institute of Health Law Studies, CWSL, and Adjunct Associate Professor of Anesthesiology and Co-Director, San Diego Center for Patient Safety, University of California, San Diego (UCSD); Jesse Goldner, Visiting Professor of Law (from Saint Louis University School of Law), CWSL; Howard L. Taras, M.D., Associate Professor, Pediatrics, UCSD; Vivian M. Reznik, M.D., Professor of Clinical Pediatrics, UCSD; Kara J. Williams, Community Health Program Manager, UCSD; Ellen L. Beck, M.D., Associate Physician, Family and Preventive Medicine, UCSD; and Dean E. Sidelinger, M.D., Clinical Instructor, Pediatrics, UCSD, for their support of my efforts in creating the course. I would also like to thank Janet Weinstein, Professor of Law and Director, J.D.-M.S.W. Dual Degree Program, and Director, Clinical Internship Program, CWSL; Thomas D. Barton, Professor of Law and Director, Louis M. Brown Program in Preventive Law, and Coordinator, National Center for Preventive Law, CWSL; Ellen Waldman, Professor of Law, Thomas Jefferson School of Law; Edward A. Dauer, Dean Emeritus and Professor of Law, University of Denver, Sturm College of Law; and Debra Gerardi, President & C.E.O., Health Care Mediations, Inc., for their helpful comments on an earlier draft of this article. A final word of thanks goes to my outstanding research assistant, Kate Somers, who was instrumental in helping me develop this course.

1. See, e.g., Fillmore Buckner, *A Physician's Perspective on Mediation Arbitration Clauses in Physician-Patient Contracts*, 28 CAP. U. L. REV. 307, 307-08 (2000); Leonard J. Marcus & Edward A. Dauer, *Medical Failure and Legal Failure: Applying Alternative Dispute Resolution Methods to Address Health System Problems and Improve Health System Outcomes*, A Report Commissioned by the American Association of Retired Persons (2003) (unpublished article, on file with the Georgia State University Law Review).

2. Debra Gerardi, *Why Manage Conflict in Health Care?*, in TRAINING MANUAL, CONFLICT MANAGEMENT IN HEALTH CARE: THE INSIDE SCOOP FOR MEDIATORS 8 (Debra Gerardi & Virginia L. Morrison eds., 2004).

3. See Eric Galton, *Mediation of Medical Negligence Claims*, 28 CAP. U. L. REV. 321 (2000) (advocating mediation); Bryan A. Liang, *Understanding and Applying Alternative Dispute Resolution Methods in Modern Medical Conflicts*, 19 J. LEGAL MED. 397, 399-400 (1998) (considering medical

Still others have begun empirical work in the ADR and health care fields to determine what the system actually needs, and during the course of their inquiry, have debunked many of the myths ADR providers hold about the health care culture.⁴ This Article offers another solution to the difficulty of applying ADR in health care—educating and training professionals in problem solving skills, attitudes, values and methodologies. This solution suggests a focus much wider than the more defined and limited parameters of ADR methodologies. It focuses less on the actual process and more on the skills and values of the provider and the problem holder (i.e., the person or entity with the issue).

This Article focuses on the author's use of real public health problems to train law students in problem solving, with the hope that ultimately such training will become more interdisciplinary. The concept of using an actual context for teaching problem solving to law students is relatively new, although is supported by colleagues who suggest the need to teach this skill in real-life settings.⁵ Some have written eloquently of their efforts and strategies to teach it in a

disputes other than malpractice claims); Dale C. Hetzler et al., *Curing Conflict: A Prescription for ADR in Health Care*, DISP. RESOL. MAG., Fall 2004, at 5, 7 (suggesting "a variety of conflict management approaches is needed").

4. Coby Anderson & Linda L. D'Antonio, *Empirical Insights: Understanding the Unique Culture of Health Care Conflict*, DISP. RESOL. MAG., Fall 2004, at 15, 18.

5. See, e.g., Alan M. Lerner, *Using Our Brains: What Cognitive Science and Social Psychology Teach Us About Teaching Law Students to Make Ethical, Professionally Responsible Choices*, 23 QUINNIPIAC L. REV. 643, 695-97 (2004) (explaining the benefits of applying a problem-based learning approach, rather than the Langdellian case method, to teach students to solve complex problems); Stephen Nathanson, *Developing Legal Problem-Solving Skills*, 44 J. LEGAL EDUC. 215, 215 (1994) (discussing the need for teachers "to synthesize general problem-solving skills and context-specific knowledge"); Janet Reno, *Lawyers as Problem Solvers: Keynote Address to the AALS*, 49 J. LEGAL EDUC. 5, 5-6 (1999). See generally Kenneth Pfeiffer et al., *Teaching Productive Problem-Solving Attitudes*, in APPLICATIONS OF COGNITIVE PSYCHOLOGY: PROBLEM SOLVING, EDUCATION, AND COMPUTING 99 (Dale E. Berger et al. eds., 1987).

For years, schools for hospital and business professionals have focused on a problem-based learning method. See, e.g., Mark Neal Aaronson, *Thinking Like a Fox: Four Overlapping Domains of Good Lawyering*, 9 CLINICAL L. REV. 1, 19 (2002) (discussing the use of the problem-based method in business schools); Gregory L. Ryan, *Problem-based Learning: Some Practical Issues*, in RESEARCH AND DEVELOPMENT IN HIGHER EDUCATION: PAPERS PRESENTED AT THE ANNUAL CONFERENCE OF THE HIGHER EDUCATION RESEARCH AND DEVELOPMENT SOCIETY OF AUSTRALASIA 155 (1989) (describing the use of problem-based learning in the training of nurses).

community lawyering context.⁶ Others are working in the medical environment and in more interdisciplinary environments to teach these skills.⁷ Hopefully these combined efforts and experiences will

6. See, e.g., Susan D. Bennett, *Embracing the Ill-Structured Problem in a Community Economic Development Clinic*, 9 CLINICAL L. REV. 45 (2002); Shin Imai, *A Counter-Pedagogy for Social Justice: Core Skills for Community-Based Lawyering*, 9 CLINICAL L. REV. 195 (2002); Katherine R. Kruse, *Biting Off What They Can Chew: Strategies for Involving Students in Problem-Solving Beyond Individual Client Representation*, 8 CLINICAL L. REV. 405 (2002); Alan M. Lerner, *Law & Lawyering in the Work Place: Building Better Lawyers by Teaching Students to Exercise Critical Judgment as Creative Problem Solvers*, 32 AKRON L. REV. 107 (1999); Andrea M. Seielstad, *Community Building as a Means of Teaching Creative, Cooperative, and Complex Problem Solving in Clinical Legal Education*, 8 CLINICAL L. REV. 445 (2002).

7. Charity Scott, Professor of Law and Director of the Center for Law, Health and Society, at the Georgia State University College of Law (GSU), teaches an interdisciplinary seminar, *Law and Medical Ethics*, which brings law students into class with third-year medical students to learn about ethics. Tom Corwin, *Class Teaches Doctors, Lawyers to Unite*, AUGUSTA CHRON., Mar. 10, 2005, available at <http://law.gsu.edu/news/view.php?version=lcprint&id=103>. Professor Sylvia B. Caley is the Director and Lead Attorney for the new Health Law Partnership (HeLP) between GSU, the Atlanta Legal Aid Society, and two Atlanta children's hospitals. *Health Law Partnership (HeLP) Overview*, Georgia State University College of Law, at <http://law.gsu.edu/clhs/partnership.php?nav=community> (last visited Mar. 23, 2005). HeLP sets up hospital-based legal clinics where law student externs work with health care providers to address the social and economic barriers to low-income children's health. *Id.* Professor Caley also teaches a course at GSU, *Health Legislation and Advocacy*, where law students work with community partners to draft and track health bills in the Georgia General Assembly. *Description of Courses*, Georgia State University College of Law, at <http://law.gsu.edu/registrar/bulletin/coursedescriptions.php?version=html> (last visited Mar. 23, 2005). Anthony V. Alfieri, Professor of Law and Director of the Center for Ethics and Public Service, operates the Community Health Rights Education Project (CHRE), an in-house clinic at the University of Miami School of Law in which law students work with students and faculty from the Schools of Medicine and Nursing to provide health care to low-income residents in Miami's community. *Center for Ethics & Public Service: Executive Summary*, University of Miami School of Law, at <http://www.law.miami.edu/ceps/projmission.html> (Fall 2004). Janet Weinstein, Professor of Law and Director, J.D.-M.S.W. Dual Degree Program, and Director, Clinical Internship Program at California Western School of Law, currently teaches a new course, *Children and Families: Interdisciplinary Practice in Problem Solving*, where students from the San Diego State University School of Social Work and law students work together to solve actual problems in the San Diego community. *Courses—Janet Weinstein*, California Western School of Law, at http://www.cwsl.edu/main/default.asp?nav=faculty.asp&header=faculty.gif&body=jweinstein/courses_taught.asp (last updated Nov. 19, 2004). Meg Gaines, Clinical Associate Professor at the University of Wisconsin Law School, is the Director of the University's Center for Patient Partnerships, a multidisciplinary center of the schools of law, medicine and nursing. The Center has a multi-course curriculum, including a clinical component where students from each respective discipline team together to help patients navigate the health care system. *About Us*, The Center for Patient Partnerships at the University of Wisconsin-Madison, at <http://www.law.wisc.edu/patientadvocacy/aboutus/aboutus.html> (last revised Jan. 25, 2005). Professor Liz Tobin Tyler co-teaches a course at Roger Williams University Law School titled *Pursuing Social Justice Through Interdisciplinary Practice: The Medical/Legal Collaborative*. *School of Law Initiates Innovative Medical-Legal Collaborative*, ENEWSLETTER (Roger Williams University Ralph R. Papitto School of Law, Bristol, R.I.), Nov. 2003, at 1, available at <http://law.rwu.edu/NR/rdonlyres/22A58702-67A7-45BA-823F-5FADA6E036D/3730/RWUSchoolofLawNewsNov2003.pdf>. Roger Williams School of Law holds joint class sessions with Brown Medical School students who take a course

enhance our approach to educating problem solvers in the health care field, as well as in other arenas.

Part I of this Article distinguishes problem solving from ADR. Parts II and III discuss the planning and structure of my course, *Problem Solving and Prevention in Health Care*. Finally, Part IV assesses the challenges and rewards I have encountered in teaching the course.

I. PROBLEM SOLVING DISTINGUISHED FROM ADR

In order to understand what problem solving is, it is useful to distinguish it from ADR. ADR covers “the full range of techniques designed to resolve disputes short of trial in the public courts.”⁸ It includes “all legally permitted processes of dispute resolution other than litigation,” with litigation being “the default process of dispute resolution.”⁹ Mediation, arbitration, mini-trial, summary jury trial, early neutral evaluation, and judicial settlement conferences are examples of ADR processes. These processes strive to resolve an actual dispute or conflict between individuals or entities.

Problem solving, on the other hand, extends beyond a series of staged processes designed to resolve a specific dispute. Rather, it is a more flexible, multidisciplinary approach to understanding and resolving problems.¹⁰ Problem solving involves numerous core skills,

entitled, *Crossing Borders: Practicing Socially Responsible Medicine in Complex Communities*, taught by Dr. Alicia Monroe and Dr. Jay Baruch. *Id.* Law and medical students work together on simulated problems emphasizing ethics, communication, and interdisciplinary collaboration. *Id.* Professors V. Pualani Enos and Lois Kanter have created an interdisciplinary clinical program with Northeastern University School of Law and the Boston Medical Center Domestic Violence Project. V. Pualani Enos & Lois H. Kanter, *Who's Listening?: Introducing Students to Client-Centered, Client-Empowering, and Multidisciplinary Problem-Solving in a Clinical Setting*, 9 CLINICAL L. REV. 83 (2002). For descriptions of additional interdisciplinary problem solving clinical programs at the University of Maryland School of Law, see *Partnerships in Problem Solving: Collaborative Clinical Education at Maryland*, IN PRACTICE (University of Maryland School of Law), Fall 2004, at 1.

8. J. H. WARREN KNIGHT ET AL., CALIFORNIA PRACTICE GUIDE: ALTERNATIVE DISPUTE RESOLUTION 1.1 (2002).

9. STEPHEN J. WARE, ALTERNATIVE DISPUTE RESOLUTION 5-6 (2001).

10. In creative problem solving, “problems are viewed as multidimensional, often requiring nonlegal or multidisciplinary solutions.” Janeen Kerper, *Creative Problem Solving vs. The Case Method: A Marvelous Adventure in Which Winnie-the-Pooh Meets Mrs. Palsgraf*, 34 CAL. W. L. REV. 351, 354 (1998). “[P]roblems may be prevented or solved more effectively by professionals from many

attitudes, and values, in addition to knowledge of processes. A problem exists because of a potential or actual disconnect between persons, entities and/or environments.¹¹ Problem solving incorporates the creation of the intervention, suitable to the needs and interests of the problem holder, and the intervention itself.¹²

Problem solving has broader potential than ADR in health care settings. Problem solving encourages an expansion from the “one-size-fits-all” solutions that ADR offers, to a broader array of possible solutions that encompass the interests, needs, and values of the problem holders. Further, a problem solving approach hopefully avoids the legal stigma that the words “ADR,” “mediation,” “arbitration,” and “conflict resolution” have unfortunately come to carry. Both the term “problem” and the term “solving” are more generic, positive, and active than their sister nominalizations above, and thus, are likely to have wider appeal.

An important element of problem solving training is education in problem prevention—the ability to prevent problems from recurring or to prevent additional problems from arising. In fact, some contend that problem solving places too much emphasis on the successful fixing of problems and not enough on the prevention or creation of

disciplines joining together.” James M. Cooper, *Towards a New Architecture: Creative Problem Solving and the Evolution of Law*, 34 CAL. W. L. REV. 297, 312 (1998).

11. See *infra* notes 14-18 and accompanying text for a discussion of problem prevention.

12. Katharine Rosenberry, Professor of Law and Academic Director of the Center for Creative Problem Solving at California Western School of Law, describes the problem solving process as expanding the problem’s context and broadening the repertoire of approaches to preventing and solving the problem. See generally Katharine Rosenberry, *Organizational Barriers to Creativity in Law Schools and the Legal Profession*, CAL. W. L. REV. (forthcoming 2005) (on file with the Georgia State University Law Review). California Western’s Dean, Steven Smith, who helped define and create the Center, describes the concept of creative problem solving as follows:

Because it is situational[,] “creative problem solving” will always elude precise definition. Precise definition is an attribute of traditional legal thinking, which seeks universal, binary solutions to complex problems. Much of the power of the concept of creative problem solving lies in its ambiguity—[its] ability to evoke a variety of responses. Since the fashioning of creative solutions depends on the ability to recognize, respect, and synthesize apparently contradictory and conflicting needs, tolerance for ambiguity and the skill to acknowledge and accept differing subjective realities are hallmarks of the discipline of creative problem solving.

E-mail from Steven R. Smith, Dean and Professor of Law, California Western School of Law, to Linda Morton, Professor of Law, California Western School of Law (July 25, 1998, 12:32 P.S.T.) (on file with the Georgia State University Law Review).

the problem.¹³ Professor Thomas Barton articulates the differences between solutional and preventive thinking as the difference between “a traditional rewind mentality” and a “preventive fast forward mentality.”¹⁴ In terms of legal education, “[p]reventive law is a ‘proactive approach to lawyering’ ‘emphasiz[ing] the lawyer’s role as a planner’ so as to ‘[avoid] the high costs of litigation and [ensure] desired outcomes and opportunities.’”¹⁵ Thus, problem prevention is the “first line” on the creative problem solving front.¹⁶ Where problem prevention “does not succeed in avoiding problems, Creative Problem Solving is warranted.”¹⁷

Because problem solving stresses skills, attitudes, and values, as well as methods, all must be taught or experienced and consistently reinforced inside and outside the classroom. Problem solving *methods* include those we associate with ADR: dialogue, negotiation, appreciative inquiry, mediation, facilitation, arbitration, ombudding, systems design, and most importantly, any combination of the above processes. For example, a single issue might include a dialogue to better understand the problem and an appreciative inquiry to realize the positive circumstances before an issue arises. The parties may negotiate through mediation or facilitation and may design a system to prevent further similar problems.

Problem solving *skills* include listening, collaborating, empathizing, working in teams, seeing the big picture, fact-finding, communicating, consensus building, making good judgments, creative thinking, assessing needs, working with other disciplines, and asking the right questions. Problem solving *attitudes* involve

13. Telephone Interview with Debra Gerardi, President & C.E.O., Health Care Mediations, Inc. (Jan. 13, 2005) [hereinafter Gerardi Interview].

14. Thomas D. Barton, *Preventive Law for Multi-Dimensional Lawyers*, 19 PREVENTIVE L. REP. 29, 29. Proactive prevention requires three steps: “1. Describe the particular elements that comprise the broader context of [the] problem. 2. Analyze the dynamics, or patterns of interaction, among these elements. . . . [and] 3) Imagine all the possible ways that the dynamic could be broken or slowed.” *Id.*

15. Thomas D. Barton, *Therapeutic Jurisprudence, Preventive Law, and Creative Problem Solving: An Essay on Harnessing Emotion and Human Connection*, 5 PSYCHOL. PUB. POL’Y & L. 921, 921 (1999) (quoting Dennis P. Stolle, et al., *Integrating Preventive Law and Therapeutic Jurisprudence: A Law and Psychology Based Approach to Lawyering*, 34 CAL. W. L. REV. 15, 16 (1998)).

16. Thomas D. Barton, *Preventive Law: The Path to Better Lawyering* (unpublished article, on file with the Georgia State University Law Review).

17. *Id.*

being open-minded, resilient, persistent, non-judgmental, humble, respectful, curious, trusting, aware of one's perspective and bias, able to accept criticism, willing to change, willing to deal with ambiguity, and willing to explore and stretch one's limits. *Values*, which certainly overlap with skills and attitudes, include respect for relationships, respect for differences, respect for culture, respect for others' knowledge, appreciation for decentralized decision-making, willingness to admit one's limitations, inclusiveness, creativity, self-awareness, and self-reflection.¹⁸

A critical problem solving component is applying these methods, skills, and values to fit the needs, values, and culture of those involved. As Professor Thomas Barton wrote:

The purpose, values, and creativity of problem solving emerge where, first, one sees and understands problems as structural barriers or dysfunctional links in the relationships between people and their environments. Second, creative problem solving responds to these problems by designing interventions that change human relationships or the objective environment in ways that respect the links that people want to keep and the decisions that they want to retain.¹⁹

II. TEACHING PROBLEM SOLVING IN A HEALTH CARE CONTEXT: THE COURSE

I have taught problem solving methodologies to law students in my Externship Seminar and in my Advanced Mediation class, and I have helped other faculty teach problem solving in non-clinical law school courses. These settings are limited. Although an expanded process for resolving problems can be taught, students cannot actually incorporate a system, much less its accompanying skills and values,

18. Some may argue these same skills and values are inherent in ADR systems of mediation and arbitration. But problem solving's approach and emphasis is broader, less conflict-specific, less structured, and more flexible and, therefore, better able to meet the needs of the problem holders.

19. Thomas D. Barton, *Creative Problem Solving: Purpose, Meaning and Values*, 34 CAL. W. L. REV. 273, 290 (1998).

without continuous contextual examples.²⁰ My experience indicates that people learn problem solving best through a continuing, experiential, real-world context. In recognition of the health care community's current needs in San Diego, and aided by the willingness of enthusiastic health care professionals at the University of California at San Diego (UCSD) to engage in problem solving collaborations with students at California Western School of Law, I chose the health care setting as the environment for teaching problem solving skills to my students.²¹

A. Planning the Course

My initial goal for the course was both broad and simple: I wanted my students to learn problem solving methods, skills, and values by working together with other disciplines to resolve actual problems in the public health care arena.²² A tangential goal was to increase their

20. See sources cited *supra* note 5. But see Bennett, *supra* note 6, at 65-66 (discussing the debate "over whether one can teach 'executive learning skills' such as problem-solving successfully through 'detached' training, in which instruction focuses on the transferable learning strategy itself; or whether students will only internalize such skills in the context of instruction in specific subject matter, through 'embedded' training" (quoting Sharon J. Derry & Debra A. Murphy, *Designing Systems That Train Learning Ability: From Theory to Practice*, 56 REV. EDUC. RESEARCH 1, 26 (1986))).

21. At the University of California, San Diego (UCSD), I owe my gratitude for such willingness to collaborate to Vivian M. Reznik, M.D., Professor of Clinical Pediatrics; Kara J. Williams, Community Health Program Manager; Howard L. Taras, M.D., Associate Professor, Pediatrics; Dean E. Sidelinger, M.D., Clinical Instructor, Pediatrics; Ellen L. Beck, M.D., Associate Physician, Family and Preventive Medicine; and Bryan A. Liang, M.D., Adjunct Associate Professor of Anesthesiology and Co-Director, San Diego Center for Patient Safety, who holds joint appointments at California Western School of Law (CWSL) and UCSD. At CWSL, Dr. Liang is a Professor of Law and the Director of California Western's new Institute of Health Law Studies, and is currently developing a curriculum for a Master's Program in Health Law. *Faculty: Brian A. Liang*, California Western School of Law, at <http://www.cwsl.edu/main/default.asp?nav=faculty.asp&body=liang/home.asp> (last visited Mar. 26, 2005). Dr. Liang's program's potential was additional inspiration for teaching my course. The affiliation between the personnel of CWSL and UCSD is partially a product of an Agreement of Association between the two institutions. *California Western and UCSD Sign Collaborative Agreement*, California Western School of Law, at http://www.cwsl.edu/main/default.asp?nav=news.asp&body=news/archives/2002_12_11.asp (Dec. 11, 2002). The goal of this association agreement is to provide broad interdisciplinary opportunities for the faculty and students of both institutions. *Id.* Its 17-point plan includes provisions for new academic programs, joint research efforts, facilities sharing, and the involvement of each institution's faculty and board members in the other institution's academic bodies and community outreach programs. *Id.* One result of this collaborative effort is the creation of a joint Master's Program in Law and Medicine, anticipated for Fall 2007. *Id.*

22. *C.f.* Seielstad, *supra* note 6, at 496 (stating:

knowledge of health care issues. Additional and more important goals developed as I began to consider the course's structure. I wanted the students to experience lawyering in a broader community context rather than within the narrow confines of law office work. I wanted them to experience the value and rewards of pro bono work within the local community. Finally, I wanted them to enlarge their experience of learning from themselves and from others through a more collaborative, less hierarchical classroom format.²³

In planning the course, I tried to apply some of the same problem solving methodologies, skills, and values I wanted to teach, rather than revert to my more limited "lawyer as ADR provider" mindset. For example, I admitted to myself and others how little I knew about the health care field, having only experienced it through some prior ADR work and personal situations.²⁴ Self-education through reading and listening was essential to my fledgling attempts to better familiarize myself with the terminology and culture of health care.

In all these efforts, I received tremendous advice and support from others. I attended an enlightening conference entitled "Creative Conflict Management in Healthcare" and a training program for mediators sponsored by Health Care Mediations, Inc. and the CUNY Dispute Resolution Consortium at John Jay College, which provided insights into management of health care conflicts.²⁵ I received

Learning to be "culturally syntonic" as well as to work with and learn from others' experiences may be especially beneficial to law students, many of whom who [sic] have had neither the life experience nor the broad range of legal training that is conducive to imagining creative solutions to complex (or even simple) problems.)

Id.

23. See Pfeiffer et al., *supra* note 6, at 102. Pfeiffer more thoroughly explains the teacher's role in this type of class as "a coach, a manager, [and] a motivator." *Id.* She also explains the need for a cooperative, rather than competitive environment. *Id.* "Rather than teaching/lecturing, faculty must act predominantly as 'facilitators,' guiding the students' development and use of problem-solving skills; promoting self-directed learning by helping students to identify learning needs and how these needs can best be met; and facilitating the development of group process skills." Ryan, *supra* note 5, at 156.

24. See Kerper, *supra* note 10, at 366. ("Creative problem solving begins with an assumption of not knowing, a confession of ignorance, a kind of bafflement, and a surrender to curiosity.")

25. The final report from the conference, held in Vancouver, British Columbia in March 2004, is available online at http://www.sfu.ca/dialogue/publications/Healthcare_Report.pdf. The training program's title was "Conflict Management in Health Care: The Inside Scoop for Mediators." See *Presentations/Trainings*, Healthcare Mediations, Inc., at <http://healthcaremediations.com/recent.htm> (last visited Mar. 23, 2005). Information on the CUNY Dispute Resolution Consortium at John Jay College is available online at <http://johnjay.jjay.cuny.edu/dispute/>.

support and encouragement from the California Western administration and faculty, and I received generous help on a national level from other health law trainers and professors in developing my course.²⁶

Despite the assistance and support, I found myself continuously tripping over my tendencies to limit my approach to my comfortably ingrained ADR skills. For example, I had difficulty abandoning the following beliefs: that hospitals would embrace my student volunteers working within their institutions; that if I could simply talk to medical professionals, they would understand how much they need our help; and that ADR lawyers would easily perform the needed aid and explain the resulting benefits. I found that hospitals were not willing to welcome my student teams inside their environments to resolve problems. Understandably, they had concerns regarding the confidentiality and credibility of the process.

In many ways, my difficulties in gaining access to conflict within hospitals proved beneficial to my own learning and classroom teaching. Realizing that my cumbersome, if not arrogant, efforts to gain credibility in another profession were inconsistent with the problem solving philosophy I was going to teach, I developed empathy for my future law students. I learned that the most effective

26. Within California Western School of Law, thanks are due to Steven R. Smith, Dean and Professor of Law; Janet Frahm Bowermaster, Associate Dean for Academic Affairs and Professor of Law; Bryan A. Liang, Professor of Law and Executive Director, Institute of Health Law Studies, and Adjunct Associate Professor of Anesthesiology and Co-Director, San Diego Center for Patient Safety, University of California, San Diego; Jesse Goldner, Visiting Professor of Law (from Saint Louis University School of Law); Susan A. Channick, Professor of Law; Janet Weinstein, Professor of Law and Director, J.D.-M.S.W. Dual Degree Program, and Director, Clinical Internship Program; Thomas D. Barton, Professor of Law and Director, Louis M. Brown Program in Preventive Law, and Coordinator, National Center for Preventive Law; and Gregg F. Relyea, Adjunct Professor. Outside assistance came from Debra Gerardi, President & C.E.O., Health Care Mediations, Inc.; Virginia Morrison, Executive Vice President & C.F.O., Health Care Mediations, Inc.; Edward A. Dauer, Dean Emeritus and Professor of Law, University of Denver, Sturm College of Law; Linda L. D'Antonio, Professor of Surgery, Loma Linda University School of Medicine; Ellen Waldman, Professor of Law, Thomas Jefferson School of Law; Meg Gaines, Clinical Associate Professor and Director of the Center for Patient Partnerships, University of Wisconsin Law School; Liz Tobin Tyler, Director of Public Service and Community Partnerships, Feinstein Institute for Legal Service, Roger Williams University, Ralph R. Pappito School of Law; Charity Scott, Professor of Law and Director of the Center for Law, Health and Society at the Georgia State University College of Law; Anthony V. Alfieri, Professor of Law and Director of the Center for Ethics and Public Service, University of Miami School of Law; and Dirk Metzger, President, Silvermark Consulting.

strategies in working with medical professionals were to admit my lack of knowledge and to listen - two skills which ran counter to my legal training. Self-disclosure and listening not only built trust, but allowed me to better understand the issues from the participant's perspective.²⁷

As a result of listening to health care professionals' concerns, I changed my approach from working within the hospital environment to working outside of it, in the public health care arena. With a better understanding of what troubled the medical professionals with whom I spoke, I collaborated with four doctors and a public health professional in selecting sixteen actual public health problems for student teams to choose from, work on, and possibly resolve during the semester.²⁸

B. *The Course Structure*

The class consisted of three units. The first unit comprised a 14-hour weekend training in problem solving. The training began with a description of a general model for problem solving and prevention (with the help of Professor Thomas Barton), and a description of the context for health care issues by Dean Steven Smith and Professor Bryan Liang.²⁹ The remainder of the training focused on problem

27. For example, when I confessed to one possibly reluctant doctor that I knew very little about the health care field, she replied, "Now I trust you," and consequently developed several team projects for my students.

28. *See infra* app. D.

29. The problem solving model is similar to an earlier model described in *Teaching Creative Problem Solving*, in *TEACHING THE LAW SCHOOL CURRICULUM* 61 (Steven Friedland & Gerald F. Hess eds., 2004). Professor Andrea Seielstad proposes a model for problem solving more appropriate to groups working together to solve community problems. Her model incorporates the concepts of group formation, problem contextualization, and reflection, components which I plan to adopt more explicitly in my own model. Seielstad, *supra* note 6, at 507-09.

Dean Steven R. Smith of California Western School of Law also teaches a course entitled *Health Law: Selected Problems Seminar*. *Faculty: Steven R. Smith*, California Western School of Law, at <http://www.cwsl.edu/main/default.asp?nav=faculty.asp&body=ssmith/home.asp> (last visited Mar. 23, 2005). Dr. Bryan A. Liang is a Professor of Law and the Executive Director of the Institute of Health Law Studies at California Western and is an Adjunct Associate Professor of Anesthesiology, as well as Co-Director of the San Diego Center for Patient Safety, at UCSD Medical School. *Faculty: Bryan A. Liang*, California Western School of Law, at <http://www.cwsl.edu/main/default.asp?nav=faculty.asp&body=liang/home.asp> (last visited Mar. 23, 2005).

solving methods, with specific practice in simulated health care problems.³⁰

I devoted one hour of the weekly classes to outside speakers from the health care community—lawyers and non-lawyers—who discussed their work in light of the specific skills and methods emphasized in the course.³¹ We spent the second hour discussing the course readings—a conflict resolution text and supplemental materials—and discussing progress on the students' public health problem projects.³² I based grades on three reports turned in over the course of the semester (each of which included an evaluation of the team process) on an in-class simulation, and on individual professionalism.³³

30. Next year's training will have less emphasis on various methods of problem solving, and more emphasis on core skills and values—teamwork, consensus building, and listening.

31. Speakers, in addition to Bryan Liang, Thomas Barton, and Steven Smith from California Western, included: Debra Gerardi, President & C.E.O., Health Care Mediations, Inc.; Linda L. D'Antonio, Professor of Surgery, Loma Linda University School of Medicine; Beverly Lauck, Ombud at Kaiser Hospital; Paula Goodman-Crews, Bioethics Consultant for Kaiser Permanente; Robert J. Wagener, President and Founder, Center for Medical Ethics and Mediation; Paul R. Belton, Vice President, Corporate Compliance, Sharp HealthCare; Richard D. Hendlin, Deputy Attorney General, State of California; Dirk Metzger, President, Silvermark Consulting; Richard ("Dick") S. Bayer, President, La Jolla Center for Dispute Resolution; Gina Tapper and Judith Yates, health care consultants; and Linda C. Fritz, Adjunct Professor of Law, California Western School of Law and Mediator/Arbitrator, JAMS, Inc.

Students consistently told me how much they appreciated the speakers who discussed their experiences resolving issues in the health care field. Despite the students' enthusiasm, in the future I will limit the number of speakers and use the additional time to discuss students' teamwork on the problems. With greater time devoted to problem discussion, there will be greater time to reinforce problem solving skills and values.

32. The text, MYRA WARREN ISENHART & MICHAEL SPANGLE, *COLLABORATIVE APPROACHES TO RESOLVING CONFLICT* (2000), which students seemed to like, is designed for graduate programs in conflict resolution. The supplemental materials consisted of a series of current articles, primarily from law reviews, on various processes used in health care problem solving (on file with author).

33. The reports comprise each team's progression through the problem solving model. For instance, the first report focused on problem diagnosis and investigation, the second on general approaches, and the third on proposed solutions and an action plan. I distributed the grading sheet for each report during the first week of class to mentor an open, honest approach, consistent with problem solving. In that class, we changed the nature of the final report because we realized it should be submitted to the health care supervisor on the project. Also, we doubled the number of points allocated to the final report from 50 to 100 and made it inclusive of all work done. Next year, I will eliminate the in-class simulations. For this exercise, I again had the class work in teams (composed of members different from their problem solving teams) to create a problem which they would demonstrate and resolve through one of the problem solving methods we learned. Although the team collaboration aspect of the exercise had value, the class time could have been better spent. In the future, I will replace the class simulations with a more formal final presentation by each team. *See infra* app. B.

The public health problems were the heart of the course. Students arranged themselves in teams of two to four individuals and selected one of sixteen offered problems, resulting in six different problems in a class of fourteen students.³⁴ Students received the health care provider's name as a contact and a brief statement of the problem. I instructed the students to imagine the health care provider hired them as paid consultants to resolve the public health problem.

III. TEACHING PROBLEM SOLVING METHODS, SKILLS, ATTITUDES, AND VALUES

The idea of teaching problem solving methods, skills, attitudes, and values is almost oxymoronic. Although law professors may attempt to "teach" the various components, students more readily learn or absorb the elements through opportunities to experience, understand, and reflect on these components as the course progresses. These "teachable moments" often arise of their own accord, and they often require no more than the professor's awareness and willingness to engage students in their own learning.³⁵

On the other hand, I do explicitly teach some essential methods and skills in the initial 14-hour training and reinforce them through practiced hypotheticals. For example, in the training, I teach a problem solving methodology that encompasses the variety of other processes, skills, attitudes, and values. Learning that a staged but flexible process exists for approaching problem solving, just as there exists in mediation and negotiation, reassures students. This model also serves as a useful structure for the three reports students submit

34. The six problems students worked on were: (1) The high rate of alcoholism in City Heights; (2) The lack of medical professionals to administer insulin to elementary school children; (3) Impairments to the mental health of children who witness domestic violence; (4) The lack of school nurses in San Diego school districts; (5) The availability of unhealthy food products on school grounds; (6) Misallocation of resources toward vision therapy for school children. *See infra* apps. C, D.

35. *See* Cynthia M. Dennis, *Expanding Students' Views of the Dilemmas of Womanhood and Motherhood Through Individual Client Representation*, 46 HOW. L. J. 269, 278 (2003) ("As clinical law teachers, we recognize that most student-teacher interactions are teachable moments. Clinical law teachers have the luxury of teaching students at every opportunity, both inside and outside the classroom setting. Sometimes, it is these unstructured and unrehearsed teachable moments that have the greatest impact on students.") (citation omitted).

over the course of the semester. Because there are no prerequisites for the course, I also teach a quick review of negotiation, mediation, facilitation, and systems design in the initial training, reinforcing the processes by engaging students in simulated health-related problems.³⁶ For students without a background in health care, I provide a list of health care terms in the training manual.

In terms of skills teaching, I explicitly teach and consistently reinforce the skill of listening, because of both its difficulty and its importance. I also teach the skill of creative thinking because it is new to law students and distinct from learning through appellate cases.³⁷ I reinforce most of the other skills and attitudes in our discussions of each team's work on their problems. To my delight, it is frequently the students, not I, who reinforce these skills and values by offering helpful suggestions to their classmates seeking advice during these discussions. Students' suggestions are usually based on problem solving skills and attitudes, such as giving up control, withholding judgment, asking the right questions, being persistent, being willing to change course, and looking at the big picture. This student interaction enhances their learning by allowing students the role of teachers, as well as recipients of learning. I also try to reinforce these skills and attitudes by encouraging the various class speakers to discuss their work in light of the skills and attitudes associated with problem solving.

The more amorphous problem solving values, such as openness to critique, self-awareness, and self-reflection, I structure into the course through students' oral and written discussion of self-learning. In addition to the final report, I ask students to submit an individual paper reflecting upon their learning and their group process. The fact that students work in teams encourages the development of several

36. Next year, training will focus more on skills and values of problem solving, rather than the methods; for example, I will include more exercises on aspects of team work, consensus building, and creative thinking.

37. See, e.g., Jennifer Gerarda Brown, *Creativity and Problem Solving*, 87 MARQ. L. REV. 697 (2004); Carrie Menkel-Meadow, *Aha? Is Creativity Possible in Legal Problem Solving and Teachable in Legal Education?*, 6 HARV. NEGOT. L. REV. 97 (2001); Rosenberry, *supra* note 12; Janet Weinstein & Linda Morton, *Stuck in a Rut: The Role of Creative Thinking in Problem Solving and Legal Education*, 9 CLINICAL L. REV. 835 (2003).

values, such as inclusivity, trust in the process, creativity, stretching one's limits, and decentralized decision-making. Similarly, the teams' successful interaction with other professionals requires values such as respect for differences, respect for others' knowledge, healthy skepticism, and respect for culture.

I try to model the methods, skills, attitudes, and values I teach. If an issue arises in the class (for example, the grading structure), we turn to an informal problem solving model, engage in dialogue, and sometimes negotiate. I openly discuss my concerns for the course and my respect for the students' differences. I try to build a collaborative classroom that encourages teamwork, empathy, and tolerance for all opinions. I ask for written and verbal feedback throughout the course and try to remain open to all criticism.

Finally, I have engaged in my own self-reflection. In particular, I have considered the challenges, rewards, and potential improvements to the course. With the realization that I still have much to learn and improve upon, I set forth these ideas below.

IV. CHALLENGES, REWARDS, AND POSSIBILITIES FOR FUTURE TEACHING

A. *The Vagueness and Complexity of Public Health Problems*

An obvious challenge in this type of course stems from working on actual public health problems. Due to their real, global, and interdisciplinary nature, these problems are unstructured, if not unwieldy. No discrete client issue exists, much less one single legal strategy. Instead, understanding these problems involves, if not requires, the aforementioned skills, attitudes, and values, such as working with other disciplines, asking questions, refraining from quick judgments, and thinking creatively.

On the other hand, law students justifiably look for structure and clarity in task definition.³⁸ Because the students' problems were real,

38. See *Generational Diversity: Competitive Advantage or Conflict for Law Firms?*, SIDEBAR FOR L. LEADERS (NALP Found. for Law Career Research & Educ., Washington, D.C.), July 2004.

vague, and often-changing, the students became frustrated.³⁹ Law students normally achieve their course grade through an internet research paper or an in-class exam, each of which propose specific answers to discrete issues.⁴⁰ For students with little work or law school clinic experience, tasks such as arranging meetings with other professionals, persisting in follow-up contacts, and culling ideas from laypersons, fall outside traditional expectations of the law school classroom experience.⁴¹

In the future, I will try harder in the beginning of the course to reduce students' ingrained expectations that problems fall into neat categorical definitions, easily resolved through internet research. This approach will hopefully help alleviate their angst when seemingly simple problems grow unwieldy. I also plan to engage students in more in-class team discussion to encourage students to get off their computers and into the community earlier.⁴² I will divide teams into a minimum of three students, instead of two, to add more diversity of background, skills, and values. Finally, I plan for prior students to visit the class to explain that, despite the difficulties in approaching their issue, ultimately all of them successfully formulated resolutions.

B. Students' Lack of Substantive Knowledge

The students' and teachers' lack of health care expertise was another challenge in teaching the course. All of us had only limited

39. For example, one of our classroom team discussions involved how one team might narrow their focus to make their problem more manageable. Thus, instead of working on the global issue of school nurse shortages, the team chose to compare two school districts, one with on-site school nurses and one without.

40. For further discussion on the hindrances traditional law school pedagogy poses to complex problem solving, see Enos & Kanter, *supra* note 7, at 86-87 and Lerner, *supra* note 5, at 654 ("While law schools make some effort to teach students analytical tools for addressing those situations, the curriculum and pedagogy of most law schools effectively teaches them how to solve only a very narrow range of problems, using a very narrow range of their problem solving tools.") (citations omitted). *Id.*

41. For example, one student team initially expressed frustration that a doctor could not make the scheduled appointment. Further discussion revealed students had e-mailed the doctor suggesting a meeting the next day. A helpful class discussion followed on expectations of other professionals and possible actions to take when contacts are difficult to reach.

42. One team had not met with their initial contact by the time the first report was due although they had researched their issue extensively.

private or public health care or ADR experience.⁴³ Some scholars question novices' ability to craft creative solutions to problems for which they have little or no "domain" knowledge.⁴⁴ On the other hand, the course offered the unexpected reward of comradery that developed as we honestly discussed our fears and concerns and worked together on issues, combining our knowledge and skill sets.⁴⁵

For next year's course, I hope to make the teams more interdisciplinary by including medical students and public health master's students.⁴⁶ To build in more knowledge of the health care system and greater empathy for health care workers, I hope to arrange for each student to "shadow" a health care worker for one day. I also plan to spend more time in class on discussions of teams' progress, in lieu of speakers and student simulations. Moreover, I will place more emphasis on final student presentations of their team problems and potential resolutions.

C. *The Unfamiliar Course Structure*

For those students with minimal seminar or clinical classroom experience, the course structure, in terms of teamwork, undefined "homework," and discussion of project difficulties, was foreign and

43. Students had taken either a simulated class in ADR or worked in the health care field, or both. I have mediated, facilitated, negotiated, and litigated some health care cases, but I have never worked directly in the public health care field. As a result, I was honest with the class about my limited experience in health care and attempted to bring in speakers from the field to supplement and reinforce my teaching.

44. Stefan H. Krieger, *Domain Knowledge and the Teaching of Creative Legal Problem Solving*, 11 CLINICAL L. REV. 149, 201 (2004) (stating that skills courses should involve problems in which students "have a substantial knowledge base both in regard to the substantive and procedural legal rules"); Paula Lustbader, *Construction Sites, Building Types, and Bridging Gaps: A Cognitive Theory of the Learning Progression of Law Students*, 33 WILLAMETTE L. REV. 315, 351-52 (1997) (discussing barriers to students' creativity as lack of experience, confidence, and developmental progress). For further discussion of levels of knowledge necessary for creative thinking, see Rosenberry, *supra* note 12 (asserting that knowledge, when organized as principles rather than facts, is useful to creativity).

45. For example, I was forthcoming about my efforts to bring in speakers from the field to supplement and reinforce the course content. For evidence of the collegiality that developed, see *infra* note 57.

46. I initially discussed with the team health supervisors the idea of combining law student teams with teams of medical, pharmacology, or public health students, but I felt daunted by the necessary persuasion, planning, and scheduling. Now that I am more comfortable with the class format and team process, I plan to put more effort into the idea of combining with other professions next year.

uncomfortable.⁴⁷ Law students are hesitant, if not apprehensive, about working in teams, particularly when their final grade depends upon their team grade.⁴⁸ One colleague succinctly stated the problem as one of trying to teach collaborative learning in a competitive environment.⁴⁹ The next time I teach the course, I plan to provide more clarity up front about the teamwork process, and I plan to bring in prior students who were also hesitant but ended up enjoying and learning from the process.⁵⁰

Some students also had difficulty with the lack of explicit weekly assignments. Although I assigned weekly readings, the students were to devote the rest of their time to working on their team project. Students who delayed working on their team project did poorly on the first team report and learned a difficult lesson.⁵¹

The course's truncated time to work on an action plan was another problem. After training in a variety of problem solving techniques and recommending different hybrid processes as potential solutions, the students expressed frustration regarding the short, 14-week span of course time, which precluded them from fully undertaking their proposed solutions. Only one team had time to enact a portion of their proposed action plan.⁵² A potential solution to the short time span might be to create a two-semester, five-unit course in which students actually engage their action plans and evaluate results. Also, next year's class could simply follow-up on the proposals of this year's class, or I could create teams of prior students to advise new

47. As one student stated in her final evaluation of the course, "I don't think the class is what I thought it was going to be." Another student stated, "[t]he class required me to get out of my 'comfort zone' and try new things." Student Course Evaluations (on file with author).

48. The following is a typical example of students' comments: "Working on a major project with another student has been a unique assignment and quite unlike anything I have done thus far in law school. I must admit that I experienced trepidation about working jointly on this type of a project" Another stated, "[w]hen I enrolled in this class, I did not realize how much I would have to rely on another person, not to mention someone I had never even seen before the first day of class." Student Self-Assessment Papers (on file with author).

49. Gerardi Interview, *supra* note 13.

50. For resources on team building and consensus building, see Seielstad, *supra* note 6, at 501 n.173.

51. See *supra* note 41.

52. The student team working on the need for more school nurses to administer insulin recommended engaging the media on the issue. To this end, the student team wrote a letter to a local television channel and is currently interacting with the newscaster regarding a potential story.

students in their problem solving efforts.⁵³ A broader approach might be to redefine students' objectives. Instead of creating an action plan from a series of well-considered solutions, students could help community groups define and work on problems together.

D. Assessing the Accomplishment of the Course Objectives

The question remains whether the course achieved my objectives for students' learning and experience. My assessment of students' learning comes from the students' written reports, final individual assessments, evaluations, and my own observations.⁵⁴

The students certainly experienced interdisciplinary community pro bono work, on which several of them commented positively in the evaluations.⁵⁵ Evidence that the students learned more about

53. Enos and Kanter discuss this idea as developing "team leaders." Enos & Kanter, *supra* note 7, at 122. This idea conforms to the concepts of "connection" and "continuity" (in addition to task "compartmentalization" and team "collaboration") as necessary components to complex problem solving. Kruse, *supra* note 6, at 433-40. For an additional very helpful summary of components to complex problem solving, see Seielstad, *supra* note 6, at 513-14.

54. Students submitted three written reports of their progress on their assigned problem during the semester. The first two reports included a team discussion describing and evaluating their team process. The final report included an individual self-evaluation of each student's learning. In addition to continuing classroom discussion of the course process, students submitted three anonymous written course evaluations: one at mid-trimester and two at the end, one of which was for the school, and the other I designed to answer my own specific questions.

The next time I teach the course, I plan to do a better job of incorporating outcome assessment by obtaining reports from all the professionals who worked with the students. Although all the professionals involved have given quite positive general reports concerning their work with the students (e.g., the students were "well-prepared" and "impressive"), I have not yet received specific feedback on two of the five team reports at the time of this writing. Of the three report critiques I have received, the comments were, for the most part, extremely positive. (One professional said that "all the solutions and their pros/cons were just so well described and complete. . . . They found things that I wasn't previously aware of." Other comments were as follows: "[S]ome very innovative solutions to what is really an intractable problem . . . these students handled it brilliantly," and "[t]here were some very good potential solutions proposed here . . . I am impressed!"). Professional Feedback Reports (on file with author). Next year, I will have a more specific questionnaire for each supervisor to complete, assessing student teams' progress, development, professionalism, and written reports. For the students, I will require responses to more specific questions in the final self-assessment and final course evaluations, such as what the student has learned about problem solving, the work of a lawyer, community work, working with other disciplines, and team collaboration. Debra Gerardi has also suggested more thoughtful questions: "What benefits have you gained from this?"; "How did you help others?"; and "How do you define 'success' as a lawyer?" Gerardi Interview, *supra* note 13.

55. As one student stated, "Working toward a real-life goal in a law school class has been very rewarding. I feel as though [team members] and I are working on something good for the community and good for our souls. This experience has inspired me to participate in finding solutions to future community problems in San Diego." Student Course Evaluations (on file with author).

problem solving was apparent in the breadth and creativity of the solutions in their final papers, students' individual self-assessments, and final course evaluations.⁵⁶ Many students also achieved a new level of self-learning, commenting on their personal reactions to team work and on their roles within the team.⁵⁷ From their comments, I can

56. Students' breadth and creativity was particularly apparent in their investigative work and in their solutions. To investigate their issues, students interviewed San Diego City Council members and attended city council meetings. They spoke with members of various community action groups working on related issues, and interviewed parents, teachers, health technicians, children, and police officers. Through this process, they arrived at a wider variety of innovative solutions. For example, the team working on problems associated with children who witness domestic violence proposed a "Kids' Response Team" involving stakeholders from a variety of organizations—police, schools, the judiciary, and the Family Justice Center—with plans for a board of directors, acquisition of funds, brochures, and a review board to assess programs' efficacy. The team dealing with the questionable expense and value of vision therapy for school children advocated a preventive approach of diagnosing vision issues before the children fall behind in their work, perhaps allowing for a less expensive and extensive form of vision adjustment. (Once a child falls behind and requires a special education program, current legislation requires school districts to offer vision therapy to any child requesting it). The team concerned with over-consumption of unhealthy vending machine beverages advocated centralizing control over contracts for vending machine services under the school districts' food services administration. Students further suggested including a campaign mobilizing students to reject campus soda and junk food sales. Final Student Papers (on file with author).

As to self-assessment, one student wrote, "I have learned that in problem solving, you have to learn to work and prosper as a group." Another student stated, "I am absolutely amazed at how my perspective on conflict has changed over the course. Initially, I had been certain that the project we were tasked with was not one that would be responsive to the 'touchy-feely' methods we discussed in class. I soon came to realize, however, that these methods touched upon underlying conflict issues that are absolutely present in our problem and underlie most, if not all, conflicts. In short, this course has immeasurably changed my perspective on conflict and my respect for alternative dispute resolution." Student Self-Assessment Papers (on file with author).

In her final course evaluation, one student wrote, "I think I know the 'take home value' you wanted each student to receive and as a participant, I can tell you that you succeeded. Students have walked away as 'believers' that [problem solving] is very conducive to the health care industry—even the greatest doubters are now converts. . . . You have opened students [sic] eyes and minds to a new area in which they can focus their careers." Student Course Evaluations (on file with author).

57. Many students asserted that they approached the concept of team work, especially team grades, with skepticism. Four of fourteen students discussed their frustrations in working with their teams, including conflicting schedules, strategies, and work expectations. One student came up with insightful ideas as to how he would have reorganized his team's process. However, all students but one commented positively about their ultimate team experience. One student wrote, "For me, the most significant thing I learned in this class is that group work is not only tolerable, but it can be enjoyable." Another student stated, "I came out of this experience not only with a fresh new outlook on working in teams, but also with a new friend." Another student commented that she will miss the relationships she established in the classroom. Several students commented in their final evaluations that the classroom environment was very different from other law school classes. Student Course Evaluations (on file with author). For a more detailed discussion of the learning students gain by working in teams, see Lerner, *supra* note 5, at 697-99.

Regarding their roles within the teams, one student expressed surprise at the more passive role he played. Another student wrote that he thought he was a team leader, until another team member pointed

anecdotally assess that students came away with not only a new set of ADR skills, but a new approach to understanding problems more broadly, and for many, a new experience of working with others to create a broader range of potential solutions.⁵⁸ Finally, the students' experience working on a pro bono project inspired some to continue their project and others to continue work in the field of public health care.⁵⁹

A reward for both the students and teacher in the course was that ultimately, every student was successful.⁶⁰ All teams helped define and reinvigorate the issues they worked on with members of the community.⁶¹ Every team came to a series of solutions to their issue. Unlike the traditional law school curriculum, there were no misguided final papers or confused responses to a final exam question.⁶² If the only accomplishment of the course was to build students' self-confidence and self-learning, the course achieved important goals. My own anecdotal assessment is that, despite setbacks and frustrations, each student came away with more confidence in his or her ability to take on a messy problem, understand it, and attempt to resolve it.

out that someone else was the leader and, upon reflection, the writer agreed. Student Self-Assessment Papers (on file with author).

58. I also teach an ADR course, *Advanced Mediation*. My goals in teaching this class are far more focused on the students' learning of specific mediation skills, as opposed to their learning how to approach their thinking about problems more broadly and more collaboratively.

59. One student commented that, prior to taking the course, she thought that the only role for her in the health care arena was that of a medical malpractice attorney. Another student decided to apply to graduate schools for a Master's degree in Public Health. Student Self-Assessment Papers (on file with author).

60. As one student wrote, "At first, I was a little overwhelmed with the magnitude of this type of project, but was amazed that I could go out into the community and speak with various stakeholders and be able to come up with a possible solution to a very important problem that affects our community." Student Self-Assessment Papers (on file with author).

61. For example, the student team working on the liquor consumption issue in City Heights was surprised to find several of the important stakeholders, such as the grocery store owners, had not been included in prior community discussions of the issue. Student Course Evaluations (on file with author).

62. Aware of the notion that one can hardly build a collaborative classroom environment with a strict grading curve, the law school administration granted my request for a more relaxed curve in this course. "Traditional approaches which emphasize knowledge of content and grade students competitively are not appropriate for an approach to learning which emphasizes process skills and self-directed, co-operative learning." Ryan, *supra* note 5, at 157.

CONCLUSION

The reward of seeing students accomplish what they sometimes viewed as impossible tasks, and seeing them learn from others and draw inspiration from their own work vastly outweighed the challenges and occasional frustrations the course brought to all involved.

Beyond the benefits to the individual students and their community client is the concept of legal institutions, such as California Western School of Law, encouraging the development of a different breed of lawyer—one who uses the tools of a true problem solver to better the lives of others.

Appendix A

SYLLABUS: PROBLEM SOLVING AND PREVENTION IN HEALTH CARE, FALL 2004

The goals of this course are to expose students to a variety of approaches to issues in health care, and to provide students with continuous opportunities in and outside of class, to practice these approaches to problem solving and prevention. The text for the course is *Collaborative Approaches to Resolving Conflict* (CARC) by Myra Warren Isenhardt and Michael Spangle, with an accompanying supplement (S), available in the bookstore.

Week/Topic	Reading	Class
1. Conflict Theory & Culture of Health Care	CARC Ch. 1; S 1	Course Admin.; Discussion
2. Problem Solving	CARC Ch. 2; S 2	Discussion; Team Reports
Mandatory Training: Friday 9/10, 4:00 – 8:00 p.m. & Saturday 9/11, 9:00 – 5:00 p.m. at CWSL		
3. Negotiation	CARC Ch. 3; S 3	Discussion; Team Reports
4. Mediation	CARC Ch. 4; S 4	Discussion; Team Reports
5. Facilitation	CARC Ch. 5; S 5	Discussion; Team Reports;
6. Arbitration	CARC Ch. 6 & 7; S 6	Discussion; Team Reports; Report 1 due in class
7. Systems Design	CARC Ch. 8; S 7	Discussion; Team Reports
8. Creative Thinking	S 8	Team Reports; Mid-trimester Evaluations
9. Cultural Issues	S 9	Discussion; Team Reports; Report 2 due in class
10. Private Meetings	Work on Simulation	No Class.
11. Skills Summary	Work on Report 3 & Simulation	Simulations 1 & 2
12. Skills Summary	Work on Report 3 & Simulation	Simulations 3 & 4
13. Career Opportunities	Finish CARC; S 10	Discussions; Team Reports
14. Team Reports	Work on Report 3	Team Reports; Report 3 due in class

Appendix B

REQUIREMENTS AND GRADING

Your grade for the course is based on professionalism (100 points), an in-class simulation (100 points), and three reports (50 points each), as described below.

Your professionalism includes:

- attending every class (you are allowed one absence).
- being on time (arriving more than ten minutes late or leaving more than ten minutes early counts as an absence) and submitting reports in a timely manner.
- participating in class discussion (joining in the discussion, asking questions).
- being respectful of others (listening; being courteous).
- collaborating with your team (problem solving and simulation) and other classmates and members of the community.

Your in-class simulation will be a negotiation, mediation, facilitation, or arbitration problem of your team's own design. Your team will have one half-hour of class time to perform it, followed by a brief evaluation. The remaining class members can either participate or observe, depending upon the nature of your problem. Within one week of your simulation, you must turn in a one-page evaluation of your team collaboration and your performance. We will discuss the process and grading for the simulation in further detail in class.

Your community health care problem will be an actual health issue in the San Diego community. Your team's job is to create a problem solving or prevention plan for the issue, in conjunction with other community members involved. Each team will turn in one report for Reports 1 and 2. Every individual on the team will receive the same grade for the reports. The third report will be an individual, not a team report. All reports are to be no more than four pages, double-spaced. The substance of the three reports shall be as follows:

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Report 1: Statement of situation; problem definition; stakeholders; investigation. Evaluation of the team process (separate page; five pages maximum).

Report 2: General approaches and possible solutions. Evaluation of the team process (separate page; five pages maximum).

Report 3: Recommended approach, including any possible creative solutions. Evaluation of the team process; description of what you learned (5 pages maximum).

Appendix C

STUDENTS' PROBLEM STATEMENTS

1. High rate of alcoholism in City Heights. How can we reduce the proportion of alcohol vendors per capita in the City Heights area to help address the larger problems of crime and dilapidation in the area?
2. Lack of medical professionals to administer insulin to elementary school children. How can we reallocate funds to allow a full-time qualified medical professional, namely a nurse, to administer insulin to young diabetic children at San Diego elementary schools?
3. Impairments to mental health of children who witness domestic violence. How can we implement an early intervention plan to protect the mental health of children who witness domestic violence?
4. Lack of school nurses in San Diego School Districts. How can schools provide needed health care services to students such as insulin administration, medication administration, assessments and referrals with follow-up, and provide first aid?
5. Availability of unhealthy food products on school grounds. How can we discourage and reduce consumption of unhealthy products from machine vendors when these vendors contribute to local school boards?
6. Misallocation of resources toward vision therapy for school children. Can the resources allocated towards vision therapy in school children be assessed and reallocated?

Appendix D

POTENTIAL PROBLEMS FOR STUDENT TEAMS

1. Children who are present when the police investigate a home on a domestic violence call frequently engage in subsequent violence due to 1) the presence of firearms in the home and/or 2) the mental health of the children involved. Police need more support in conducting preventive measures. Contact person: Dean Sidelinger, M.D.
2. The rate of adolescent suicide in San Diego has risen tremendously in the past few years, especially among Asian girls. Contact person: Kara Williams, M.P.H.
3. The rate of prostitution has risen tremendously, especially in San Diego middle schools. Contact person: Kara Williams, M.P.H.
4. Many individuals sign up for health insurance, and then don't use it, thereby losing it. Contact person: Howard Taras, M.D. and Elaine Pizzola (U.C.S.D. and County Public Health and Human Services).
5. With tightening budgets for education, there has been a drastic decrease in school nurses. Students' health issues are not given appropriate attention. Contact person: Howard Taras, M.D. and a school nurse (TBA).
6. Increasing numbers of very young school children during the day require insulin for their diabetes; yet there is no one on the school staff who can administer it. Contact person: Howard Taras, M.D. and a school nurse (TBA).
7. The California State Education Code allows too much money to be spent on unproven therapeutic interventions for learning disabilities ("vision therapy"). Some optometrists are profiting greatly, while basic learning needs of children remain underfunded. Contact person: Howard Taras, M.D. and a school representative (TBA).
8. There is great disparity in access to health care between minorities and non-minorities in San Diego. Contact person: Kara Williams, M.P.H.

9. The pervasiveness of trash in the City Heights area has caused severe problems with asthma in children who live there. Contact person: Kara Williams, M.P.H.
10. There is a disparity in mental health support between schools in poorer districts and schools in more economically stable districts. Contact person: Kara Williams, M.P.H.
11. There is no plan for transition for foster care children once their foster care is completed. Contact person: Kara Williams, M.P.H.
12. Soft drink vendors who contract with school districts are exacerbating the problem of obesity in school children by encouraging schools to make soda vending machines more available to students. Contact person: Howard Taras, M.D.
13. Immigrant families don't avail themselves of health care benefits they have a right to receive. Unfounded and founded fears of government investigation into their lives, future problems with INS, and other problems are likely the source. Contact person: Howard Taras, M.D. and Elaine Pizzola.
14. Part-time employee parents don't avail themselves of child-dependent health care benefits that their children have a right to receive. It has been difficult for county public health staff to find a way to get employers of large numbers of part-time workers to receive the information on subsidized health insurance they need. Contact person: Howard Taras, M.D., with Elaine Pizzola and Johanna Maralet.
15. City Heights has a very high substance abuse ratio, due in part to the large number of liquor outlets in the area. Contact person: Kara Williams, M.P.H.
16. A free, student-run family health clinic cannot get needed diabetes strips for patients, because patients must have access to health care in order to receive them. Contact person: Ellen Beck, M.D.